

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SCOTT JACKSON AND
MARIA JACKSON,
Individually, and on Behalf of All
Others Similarly Situated,

Plaintiffs,

v.

EME HOMER CITY GENERATION, L.P.,
HOMER CITY OL1 LLC; HOMER CITY OL2
LLC; HOMER CITY OL3 LLC; HOMER CITY
OL4 LLC; HOMER CITY OL5 LLC; HOMER
CITY OL6 LLC; HOMER CITY OL7 LLC;
HOMER CITY OL8 LLC; AND
NEW YORK STATE ELECTRIC AND GAS
CORP.; PENNSYLVANIA ELECTRIC ENERGY
CO., EDISON MISSION ENERGY; MISSION
ENERGY HOLDING CO.; AND EDISON
INTERNATIONAL,

Defendants.

CIVIL ACTION No. 2:11-cv-00028-TFM

Electronically Filed

**DEFENDANTS HOMER CITY
OWNER-LESSORS' MOTION TO
DISMISS**

DEFENDANTS HOMER CITY OWNER-LESSORS' MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Homer City Owner-Lessors 1–8 (“OLs”), by and through their undersigned counsel, hereby move to dismiss the complaint (“Complaint”) filed against them by plaintiffs Scott and Maria Jackson (the “Plaintiffs”). In support thereof, the OLs state as follows:

1. On January 7, 2011, Plaintiffs filed the Complaint against EME Homer City Generation, L.P., New York State Electric and Gas Corp. (“NYSEG”), Pennsylvania Electric Energy Co. (“PENELEC”), Edison Mission Energy, Mission Energy Holding Co., Edison International, and the OLs. Plaintiffs allege that the OLs violated the Clean Air Act’s (“CAA’s”)

Prevention of Significant Deterioration (“PSD”) program, 42 U.S.C. §§ 7470–7479, 7491–7492, and the Pennsylvania Hazardous Sites Cleanup Act (“HSCA”), 35 P.S. §§ 6020.102–6020.1305, and committed various state law torts.

2. Plaintiffs allege that the above listed violations and torts arose from NYSEG’s and PENELEC’s alleged failure to comply with PSD requirements before modifying the Homer City Generating Station in 1994.

3. The CAA does not authorize Plaintiffs to file a citizen suit against the OLs based on the alleged PSD violation and, therefore, Plaintiffs cannot state a CAA claim against the OLs. *See* 42 U.S.C. § 7604.

4. Plaintiffs further cannot state a PSD claim against the OLs because the OLs did not own and had no connection to the Homer City Generating Station in 1994, the year that the PSD violations allegedly occurred.

5. Plaintiffs cannot state any HSCA or state tort law claims against the Plaintiffs because, as pled, the claims (a) are derivative of the failed CAA and PSD claims, and (b) fail to meet federal pleading standards.

WHEREFORE, Defendants OLs request that this Court grant their Motion to Dismiss and enter an order, in the form of the proposed order submitted herewith, pursuant to Federal Rule of Civil Procedure 12(b)(6), dismissing Plaintiffs Scott and Maria Jackson’s Complaint against the OLs with prejudice for failing to state a claim upon which relief can be granted.

Dated: April 21, 2011

Respectfully submitted,

/s/ Peter T. Stinson

Peter T. Stinson

W. Alan Torrance, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2011, a true and correct copy of the foregoing document was submitted upon all counsel of record via the CM/ECF system.

Respectfully submitted,

/s/ Peter T. Stinson

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